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TAN KOK TONG

v.

HOE HONG TRADING CO SDN BHD

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COURT OF APPEAL, PUTRAJAYA

GOPAL SRI RAM JCA

LOW HOP BING JCA

ABDULL HAMID EMBONG JCA

[CIVIL APPEAL NO: W-02-376-2005]

C

8 NOVEMBER 2006

COMPANY LAW: *Winding up - Injunction to restrain petition - Test to be applied - Whether debt claimed bona fide disputed on substantial grounds - Whether not a debt due on demand - Whether just and equitable to grant injunction - Order as to costs*

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CIVIL PROCEDURE: *Injunction - Injunction to restrain winding up petition - Test to be applied - Whether debt claimed bona fide disputed on substantial grounds - Whether not a debt due on demand - Whether just and equitable to grant injunction - Order as to costs*

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These were two appeals; the first was directed against the order of the High Court granting an *inter partes* interim injunction against the appellant/defendant from presenting a winding up petition against the respondent/plaintiff, and the second was directed against the refusal of the learned judge of the High Court to dissolve the earlier *ex parte* order which he had granted in like terms as the *inter partes* injunction which was the subject matter of the first appeal. The plaintiff was a private limited company and was basically a family enterprise run by three brothers and a nephew. At all material times, the defendant was the managing director of the plaintiff. Upon his subsequent removal from that position, the defendant took out a petition under s. 181 of the Companies Act 1965 ('Act'), alleging oppression. That petition was currently pending the hearing of the summons for direction before the High Court. It was undisputed that the defendant had advanced amounts in excess of RM1 million to the plaintiff, a fact confirmed by the plaintiff's accounts, Note 6 of which made reference to the sum outstanding owing to the defendant and the other directors. When the defendant received no response to his demand for the amount owed to him, he instructed his solicitors to send a formal demand under s. 218 of the Act. The plaintiff

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caused to be issued a writ seeking a declaration that the demand was premature and not in accordance with law. There was also a claim for a consequential order to restrain the defendant from presenting a winding up petition against the plaintiff, and the plaintiff moved by *ex parte* and obtained an interim injunction to restrain the presentation of the winding up. For some reason, the order granted required the defendant to pay the costs of that application. The plaintiff then took out an *inter partes* summons in the same terms as the earlier *ex parte* application, which was heard and granted by the learned judge who also dismissed the defendant's application to discharge the *ex parte* order. As mentioned above, the defendant appealed against both these orders, his main thrust being that the learned judge misdirected himself on the correct test that is to be applied to a case as the present.

Held (dismissing the appeals)
Per Gopal Sri Ram JCA:

- (1) The general principle, unchanging in substance, is that a court will grant an interlocutory injunction whenever it is just and equitable to do so. Whether it is just and equitable to issue an injunction in a given fact pattern must vary from case to case. Accordingly, it is not practical just to apply a uniform or standard measure for a wide-ranging set of circumstances. That is because equitable relief is flexible and to apply a standard formula would be to deprive or erode the wide discretion that a court has in deciding whether or not to grant interim equitable relief. In the application of this general principle to the kind of injunction sought in the present instance, the test was whether the debt claimed was *bona fide* disputed on substantial grounds (*Molop Corp Sdn Bhd v. Uniperkasa (M) Sdn Bhd* (foll); *American Cynamid Co v. Ethicon Ltd* (dist)). (paras 9)
- (2) This was not a normal case of a creditor demanding a debt due to him in the ordinary course of business. There was a story lying behind the debt. It was alleged by the plaintiff that although there was no dispute about the sum owing to the defendant, the terms of repayment were agreed between the brothers and the nephew collaterally. In short, this was not a debt due on demand. There was also the circumstance before the judge of the presentation of the petition under s. 181 of

- A the Act. The court hearing that petition has wide jurisdiction under subsection 2 of that section to make orders adjusting the rights of the parties. The defendant conceded that the court hearing the petition under s. 181 of the Act would have the power to deal with the debt which formed the subject
- B matter of the present suit. The totality of the circumstances accordingly reasonable supported a *prima facie* inference that the statutory demand and the threat to present a winding up petition were made for a collateral purpose, namely to bring pressure on the plaintiff. A court is well entitled to restrain
- C such a petition and if a petition is in fact presented, the court has power to dismiss it on that ground. Thus, the learned judge was entirely correct in granting the *inter partes* injunction. (para 10)
- D (3) In respect of the *ex parte* order, the learned judge was correct in his approach that once the plaintiff's application for an *inter partes* injunction succeeded, the defendant's application to set aside the *ex parte* injunction was doomed to failure. The defendant's complaint that the *ex parte* order was obtained in
- E breach of O. 29 r. 1(2A) of the Rules of the High Court 1980, the argument being that the plaintiff did not disclose points in favour of the defendant when making the *ex parte* application, in particular the admission in Note 6 of the plaintiff's accounts, could not be accepted. There was nothing
- F in the point because the debt was in fact *bona fide* disputed on substantial grounds; not as to its amount, but as to the terms of its repayment. However, the order for costs ought not to have been made in the way that it was. The matter was academic because having failed in its application to set
- G aside the *ex parte* order, the defendant had to pay the costs occasioned by its failure. Perhaps the proper order would be to relieve the defendant from paying the costs of the *ex parte* order. Therefore, so much of that order was set aside. (para 12)

H ***Bahasa Malaysia translation of headnotes***

- I Terdapat dua rayuan di sini; pertama terhadap perintah Mahkamah Tinggi kerana mengeluarkan injunksi interim *inter partes* terhadap perayu/defendan menghalangnya dari mengemukakan petisyen penggulangan ke atas responden/plaintif, dan kedua terhadap keengganan yang arif hakim Mahkamah Tinggi membatalkan perintah injunksi *ex parte* yang dibenarkan sebelumnya dan yang

mempunyai terma yang sama seperti perintah *inter partes* yang menjadi asas rayuan pertama. Plaintiff adalah sebuah syarikat berhad dan merupakan sebuah perniagaan keluarga yang diuruskan oleh tiga adik beradik dan seorang kemanakan. Pada waktu material, defendan adalah pengarah urusan plaintiff. Setelah tersingkir dari jawatan tersebut, defendan mengeluarkan petisyen di bawah s. 181 Akta Syarikat ('Akta') sambil mendakwa berlaku penindasan terhadapnya. Petisyen tersebut kini masih menunggu pendengaran saman untuk arahan di hadapan Mahkamah Tinggi. Tidak dinafikan bahawa defendan telah mendahulukan sejumlah RM1 juta kepada plaintiff, fakta mana telah disahkan oleh akaun plaintiff, di mana Nota 6 di situ merujuk kepada jumlah yang terhutang kepada defendan dan lain-lain pengarah. Sebaik tidak menerima tindakbalas plaintiff berhubung tuntutan mereka menuntut jumlah terhutang, defendan mengarahkan peguamcaranya menghantarkan satu tuntutan formal di bawah s. 218 Akta. Plaintiff membalas dengan mengeluarkan writ memohon perisytiharan bahawa tuntutan adalah pramasa dan tidak mengikut undang-undang. Plaintiff juga memohon perintah sampingan untuk menghalang defendan dari mengemukakan petisyen penggulungan terhadapnya, dan berikutnya memperoleh satu perintah injunksi *ex parte* menghalang pengemukakan petisyen penggulungan berkenaan. Bagaimanapun, atas alasan-alasan tertentu, perintah yang diberi itu mengkehendaki supaya kos permohonan dibayar oleh defendan. Plaintiff kemudian mengeluarkan saman *inter partes* dalam terma yang sama seperti permohonan *ex parte* di atas, saman mana telah didengar dan dibenarkan oleh yang arif hakim yang juga menolak permohonan defendan untuk mengenyepikan perintah *ex parte*. Seperti yang dikatakan, defendan merayu terhadap kedua-dua perintah sambil berhujah, secara pentingnya, bahawa yang arif hakim telah tersalah arah akan dirinya berkaitan ujian sebenar yang perlu diaplikasikan dalam kes seperti kes semasa.

Diputuskan (menolak rayuan)

Oleh Gopal Sri Ram HMR:

- (1) Asas prinsip am yang tidak pernah berganjak adalah bahawa mahkamah akan membenarkan injunksi interlokutori bilamana ianya adil dan saksama untuk berbuat demikian. Sama ada ianya adil dan saksama untuk mengeluarkan injunksi dalam sesuatu kedudukan fakta akan bergantung kepada halkeadaan kes-kes itu sendiri. Maka itu, adalah tidak praktikal untuk melaksanakan satu ukuran yang standard atau seragam kepada setiap keadaan dan suasana. Ini kerana relif ekuiti adalah

- A fleksibel dan mengaplikasikan formula standard akan hanya menjejaskan budi bicara luas yang diberikan kepada mahkamah untuk membenarkan relif ekuiti interim atau sebaliknya. Dalam melaksanakan prinsip am tersebut kepada injunksi seperti yang dipohon di sini, ujiannya adalah sama ada hutang yang dituntut
- B itu dipertikai secara *bona fide* dengan alasan-alasan yang kukuh (*Molop Corp Sdn Bhd v. Uniperkasa (M) Sdn Bhd* (diikuti); *American Cynamid Co v. Ethicon Ltd* (dibezakan)).
- (2) Ini bukan suatu kes biasa seorang pemiutang yang menuntut hutang yang terhak kepadanya dalam perjalanan perniagaannya. Terdapat cerita di sebalik hutang tersebut. Plaintif mendakwa bahawa tidak wujud pertikaian mengenai jumlah yang terhutang kepada defendan dan bahawa terma-terma pembayaran balik juga telah dipersetujui di antara ketiga adik beradik dan kemanakan mereka. Pendeknya, ini bukan satu hutang tertunggak yang dituntut. Selain itu, di hadapan hakim, soal pengemukakan petisyen di bawah s. 181 Akta juga berbangkit. Mahkamah yang mendengar petisyen itu mempunyai budi bicara luas di bawah sub-s. 2 seksyen untuk membuat perintah bagi menyelaraskan hak pihak-pihak. Defendan mengakui bahawa mahkamah yang mendengar petisyen di bawah s. 181 Akta mempunyai kuasa untuk menangani persoalan hutang yang dituntut yang menjadi perkara pokok tindakan di sini. Oleh itu, halkeadaan pada keseluruhannya secara *prima facie* menyokong inferens bahawa tuntutan statutori dan ugutan untuk mengemukakan petisyen penggulangan adalah dibuat dengan maksud kolateral, iaitu untuk memberi tekanan kepada plaintif. Mahkamah berhak untuk menghalang petisyen sedemikian, dan sekiranya petisyen telah pun dikemukakan, mahkamah mempunyai kuasa untuk menolaknya atas alasan yang sama. Oleh itu yang arif hakim betul apabila membenarkan injunksi *inter partes*.
- (3) Berkaitan perintah *ex parte*, yang arif hakim betul dalam mengambil pendekatan bahawa sebaik sahaja permohonan plaintif untuk injunksi *inter partes* berjaya, permohonan defendan untuk mengenepikan injunksi *ex parte* dengan sendirinya gagal. Bantahan defendan bahawa perintah *ex parte* diperolehi secara yang melanggar A. 29 k. 1(2A) Kaedah-Kaedah Mahkamah Tinggi 1980, dimana dihujah bahawa plaintif tidak mendedahkan perkara-perkara yang menyebelahi defendan ketika membuat permohonan *ex parte*, terutama Nota
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6 di akaun plaintiff, tidak dapat diterima. Ia hanyalah bantahan kosong semata-mata, kerana hutang sebenarnya telah dipertikai secara *bona fide* atas alasan-alasan yang kukuh; bukan yang berkaitan dengan jumlahnya, tetapi yang bersangkutan dengan terma-terma pembayaran balik. Bagaimanapun, perintah mengenai kos tidak sepatutnya dibuat dalam bentuk yang ada. Apapun itu sudah menjadi akademik kerana, setelah gagal dalam permohonannya untuk mengenyahkan perintah *ex parte*, defendan perlu membayar kos atas kegagalannya itu. Mungkin, perintah yang lebih teratur adalah untuk melepaskan defendan dari membayar kos perintah *ex parte*. Oleh itu, perintah berkenaan setakat mana yang berkaitan adalah diketepikan.

Case(s) referred to:

American Cyanamid Co v. Ethicon Ltd [1975] AC 396 (**dist**)
Fortuna Holdings Pty Ltd v. The Deputy Commissioner of Taxation of the Commonwealth of Australia [1978] VR 83 (**refd**)
Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin bin Ungku Mohamed [1998] 2 CLJ 340 CA (**refd**)
Molop Corp Sdn Bhd v. Uniperkasa (M) Sdn Bhd [2003] 6 MLJ 311 (**fol**)
Re Bellador Silk, Ltd [1965] 1 All ER 667 (**refd**)
Stonegate Securities Ltd v. Gregory [1980] 1 All ER 241 (**refd**)

Legislation referred to:

Companies Act 1965, s. 181
 Rules of the High Court 1980, O. 29 r. 1(2A)

For the appellant - Lim Chee Wee (Lee Shih with him); M/s Skrine
For the respondent - David Hoh; M/s Lim & Hoh

[Appeal from High Court, Kuala Lumpur; Suit No: D3-22-1365-2004]

Reported by Suresh Nathan

JUDGMENT

Gopal Sri Ram JCA:

[1] This is the judgment of the court.

[2] There are two appeals before us. The first, Civil Appeal No. W-02-376-2005, is directed against the order of the High Court granting an *inter partes* interim injunction dated 16 March 2005 against the defendant (the appellant before us) from presenting a winding up petition against the plaintiff (who is the respondent

- A before us). The second appeal, Civil Appeal No. W-02-377-2005, is directed against the refusal of the learned judge of the High Court to dissolve the earlier *ex parte* order dated 23 September 2004 which he had granted in like terms as the *inter partes* injunction which is the subject matter of the first appeal. We find
- B it convenient to deal with the first appeal *in toto*. We will however, make the necessary remarks about the second appeal at the appropriate places in the judgment.

- C [3] The plaintiff is a private limited company. It is basically a family enterprise run by three brothers and a nephew. At all material times, the defendant was the managing director of the plaintiff company. Later he was removed as managing director but he remained at all times and continues to remain as a director. The company is a going concern. It has the benefit of the
- D distributorship of cigarettes in the city of Klang. In 2003, a dispute arose between the brothers and the nephew. The consequence of that dispute was, as we have just said, the removal of the defendant as managing director. The defendant was unhappy: perhaps justly so because he had run the company for sometime
- E with a measure of success. He took out a petition under s. 181 of the Companies Act 1965, alleging oppression. That petition is currently pending the hearing of the summons for directions before the High Court.

- F [4] It is undisputed that the defendant had advanced amounts in excess of RM1 million to the plaintiff. This fact is confirmed by the plaintiff's accounts, Note 6 of which makes reference to the sum outstanding owing to the defendant and the other directors. By a letter dated 6 August 2004, the defendant made a demand
- G for the amount owing to him. He received no response. So he instructed his solicitors to send a formal demand under s. 218 of the Companies Act 1965. That demand is dated 27 August 2004. On 20 September 2004, the plaintiff company caused to be issued a writ seeking a declaration that the demand was premature and not in accordance with law. There was also a claim for a
- H consequential order to restrain the defendant from presenting a winding up petition against the plaintiff. On the same date, the plaintiff moved by *ex parte* and obtained an interim injunction to restrain the presentation of the winding up. For some reason, not
- I made entirely clear to us in argument before us, the order granted required the defendant to pay the costs of that application. We

will deal with this part of the case later in this judgment. Suffice to say for now that this is a most unusual order. In a normal case, costs of an *ex parte* application usually are in the cause or follow the event of the *inter partes* application. Returning to the mainstream, the plaintiff took out an *inter partes* summons in the same terms as the earlier *ex parte* application. That was heard and granted by the learned judge who also dismissed the defendant's application to discharge the *ex parte* order. As we have already said, the defendant has appealed against both these orders.

[5] The main thrust of the defendant's case before us is that the learned judge misdirected himself on the correct test that is to be applied to a case as the present. Mr. Lim Chee Wee, of counsel for the appellant, argued that the learned judge was wrong in at least three instances. First, he paid little or no regard to the clear admission of the debt in question by the plaintiff in its accounts. Second, he misdirected himself in law by applying a low threshold in granting the injunction sought. Thirdly, the learned judge took into account irrelevant considerations. Before we express our concluded views on the complaints made by the defendant, we think we should say a few words about the nature of the injunction in this case.

[6] Every court has inherent jurisdiction to prevent an abuse of its process. It is a jurisdiction that is essential to ensure that the court's process is not used for a collateral purpose; that is to say for a purpose other than to obtain redress for a genuine grievance. This court has recognised that jurisdiction on more than one occasion. In *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin bin Ungku Mohamed* [1998] 2 CLJ 340, this court observed as follows:

Every person who is aggrieved by some wrong he considers done him is at liberty to invoke the process of the court. Equally may a litigant invoke the process to enforce some claim which he perceives he has against another. When however, the process of the court is invoked, not for the genuine purpose of obtaining the relief claimed, but for a collateral purpose, for example, to oppress the defendant, it becomes an abuse of process. Where the court's process is abused, the proceedings complained of may be stayed, or if it is too late to grant a stay, the party injured may bring an action based on the tort of collateral abuse of process.

A The position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v. Sperrings* [1977] 1 WLR 478, where at page 489 he said:

B In a civilised society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression: or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer'.

D Though a dissenting judgment, the principle enunciated by the Master of the Rolls has been accepted as authoritative of what constitutes an abuse of process.

E [7] When a court exercises its discretion to issue an injunction to restrain the presentation of a winding up, it exercises its inherent jurisdiction. It does so in order to prevent an abuse of its process. In *Fortuna Holdings Pty Ltd v. The Deputy Commissioner of Taxation of the Commonwealth of Australia* [1978] VR 83, McGarvie J put the point as follows:

F When a court restrains the presentation of a winding up petition to that court it exercises part of its inherent jurisdiction to prevent abuse of its process. *Mann v. Goldsteing* [1968] 1 WLR 1091, at pp. 1093-4; [1968] 2 All ER 769. Usually a court acts against abuse of its process after proceedings have been commenced.

G Thus, existing proceedings may be stayed or dismissed, or documents delivered as a step in the proceedings may be struck out. This is done to relieve a party to the proceedings from an oppressive and damaging situation in which he has been placed through abuse of court process. The law has long recognized that with proceedings to wind up a company, intervention after the commencement of proceedings would often be too late to relieve the company of oppression and damage. The courts have recognized that irreparable damage may be done to a company merely through public knowledge of the presentation of a petition. Usually the damage flows from the loss of commercial reputation which results. The courts have also been conscious of the pressure which may be put on a company, by a person with a

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disputed claim against it, threatening to present a winding up petition unless the company meets his claim. While that threat exists, the company, in order to avoid the damage involved in the presentation of a petition, is pressed to meet the claim although it may have substantial and genuine grounds for regarding itself as not required to do so.

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The decisions of the courts have established the principle that the presentation of a winding up petition may be restrained by injunction where its presentation would amount to an abuse of the process of the court. The courts apply this principle similarly to restrain the advertisement of a petition already presented. The principle enables companies to be protected from threatened or apprehended oppression and damage from abuse of court process.

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[8] When deciding whether to grant an injunction to restrain a petition that is based on a statutory demand for a debt, the court must be satisfied that the debt is *bona fide* disputed on substantial grounds (see *Stonegate Securities Ltd v. Gregory* [1980] 1 All ER 241). It is not enough that there is a serious question to be tried. In other words, this is one of those cases to which the general test laid down in *American Cyanamid Co v. Ethicon Ltd* [1975] AC 396 does not apply. In *Molop Corp Sdn Bhd v. Uniperkasa (M) Sdn Bhd* [2003] 6 MLJ 311 Low Hop Bing J (as he then was) correctly held as follows:

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In *Natseven TV Sdn Bhd v. Television New Zealand Ltd* [2001] 4 CLJ 722, I had the occasion to consider and determine the burden of proof cast on the plaintiff in an application for interlocutory injunction to restrain the presentation of a winding up petition, in the following words:

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I agree with the reasons given by the English and New Zealand Court of Appeal respectively and by Abdul Malik J and hold that for the purpose of obtaining an interim injunction to restrain the defendant from proceeding with the winding up petition, the burden of proof cast on the plaintiff is only discharged by reference to the standard of proof or test in adducing evidence to establish a *prima facie* case and that the principle relating to the test of “serious question to be tried” in *American Cyanamid Co v. Ethicon Ltd* [1975] AC 396; [1975] 1 All ER 504 as applied in *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors* [199] 1 MLJ 193 is not applicable as the applications there were not applications to restrain winding up petitions or proceedings, such as in the instant case before me.

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A Illustration of a *prima facie* case may be provided by necessary evidence that there is a *bona fide* dispute by the plaintiff in relation to the statutory demand or that the plaintiff is solvent.

B [9] Mr. Lim Chee Wee of counsel has submitted that the judgments on the correct test to be applied as handed down by the different divisions of the High Court in this country are at variance; that they do not speak with one voice. With respect, we are unable to agree. The general principle, unchanging in substance, is this. A court will grant an interlocutory injunction whenever it is just and equitable to do so. Whether it is just and equitable to issue an injunction in a given fact pattern must vary from case to case. Accordingly, it is not practical just to apply a uniform or standard measure for a wide ranging set of circumstances. That is because equitable relief is flexible and to apply a standard formula would be to deprive or erode the wide discretion which a court has in deciding whether or not to grant interim equitable relief. In the application of this general principle to the kind of injunction sought in the present instance, the test is whether the debt claimed is *bona fide* disputed on substantial grounds.

E [10] With that, we now turn to consider the defendant's complaints in this appeal. We are unable to agree with Mr. Lim Chee Wee that the learned judge has erred in the exercise of his discretion. This is not a normal case of a creditor demanding a debt due to him in the ordinary course of business. There is a story lying behind the debt. It is alleged by the plaintiff that although there is no dispute about the sum owing to the defendant, the terms of repayment were agreed between the brothers and the nephew collaterally. In short, this was not a debt due on demand. There is also the circumstance before the judge of the presentation of the petition under s. 181. The court hearing that petition has wide jurisdiction under subsection 2 of that section to make orders adjusting the rights of the parties. With his customary frankness, Mr. Lim Chee Wee conceded that the court hearing the petition under s. 181 would have power to deal with the debt which now forms the subject matter of the present suit. The totality of the circumstances accordingly reasonably support a *prima facie* inference that the statutory demand and the threat to present a winding up petition were made for a collateral purpose, namely to bring pressure on the

plaintiff company. A court is well entitled to restrain such a petition and if a petition is in fact presented the court has power to dismiss it on that ground (see *Re Bellador Silk, Ltd* [1965] 1 All ER 667).

[11] Having given this matter our utmost consideration and having anxiously scrutinised the record we are satisfied that the learned judge was entirely correct in granting the *inter partes* injunction.

[12] That brings us to the defendant's complaint about the *ex parte* order. We are in agreement with the approach of the learned judge that once the plaintiff's application for an *inter partes* injunction succeeded, the defendant's application to set aside the *ex parte* injunction was doomed to failure. We are unable to accept Mr. Lim Chee Wee's complaint that the *ex parte* order was obtained in breach of O. 29 r. 1(2A) of the Rules of the High Court 1980. Learned counsel's argument is that the plaintiff did not disclose points in favour of the defendant when making the *ex parte* application, in particular the admission in Note 6 of the plaintiff's accounts. But we do not think there is anything in the point because the debt was in fact *bona fide* disputed on substantial grounds; not as to its amount, but as to the terms of its repayment. But we do agree with Mr. Lim Chee Wee that the order for costs ought not to have been made in the way it was. The matter is academic because having failed in its application to set aside the *ex parte* order, the defendant has to pay the costs occasioned by its failure. Perhaps the proper order would be to relieve the defendant from paying the costs of the *ex parte* order. We would therefore set aside so much of that order.

[13] Save to the very limited extent to which we have indicated, we are unanimous that these appeals are without merit and we dismiss them. The appellant shall pay the costs of these appeals to the respondent. The deposits shall be paid to the respondents to account of their taxed costs. For completeness, we affirm the *inter partes* injunction granted by the learned judge.

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